

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 01-1139(JFK)
. .
. .
W.R. GRACE, .
. 824 North Market Street
. Wilmington, DE 19801
. .
Debtor. . February 14, 2011
. . 10:59 a.m.
.

TRANSCRIPT OF HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

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- - -

1 COURT CLERK: All rise.

2 THE COURT: Good morning. Please be seated. This is
3 the matter of W.R. Grace, Bankruptcy Number 01-1139. I read
4 the parties who were participating by phone except for these
5 additional, Ari Berman, Terese Best, David Blabey, Michael
6 Brown, Gabriella Cellarosi, Daniel Cohn, Andrew Craig, Leslie
7 Davis, Elizabeth DeCristofaro, Michael Duggan, Jordan Fisher,
8 Michael Giannotto, Daniel Glosband, Sarah Hargrove, Douglas
9 Herrmann, Robert Horkovich, Brian Kasprzak, Michael Linn,
10 Edward Longosz, Charles Nerko, David Parsons, Carl Pernicone,
11 Mark Plevin, David Rosendorf, Robert Sales, Tancred Schiavoni,
12 Robert Siegel, Shayne Spencer, Gary Svirsky, David Turetsky,
13 Michael Walsh, Jennifer Whitener, Leslie -- no, that's all.
14 Sorry.

15 I'll take entries in Court, please.

16 MR. DONLEY: John Donley on behalf of the debtors,
17 Your Honor.

18 MS. BAER: Janet Baer on behalf of the debtors.

19 MR. BENTLEY: Philip Bentley for the equity
20 committee.

21 MR. LOCKWOOD: Peter Lockwood for the ACC.

22 MR. FRANKEL: Good morning, Your Honor. It's Roger
23 Frankel on behalf of the David Austern, PI, FCR.

24 MR. O'NEILL: Good morning, Your Honor. James
25 O'Neill for the debtors.

1 MR. PASQUALE: Good morning, Your Honor. Ken
2 Pasquale from Strook and Strook and Lavan for the official
3 unsecured creditors' committee. Thank you.

4 MR. COBB: Good morning, Your Honor. Richard Cobb,
5 Landis, Rath and Cobb, on behalf of certain bank lenders.

6 MR. MONACO: Good morning, Your Honor. Frank Monaco
7 from Womble Carlyle on behalf of Montana and Canada.

8 MR. CASSADA: Good morning, Your Honor. Garland
9 Cassada here for Garlock Sealing Technologies. I'm here with
10 Brett Fallon, our local counsel, and Mr. Worf.

11 THE COURT: Thank you.

12 MR. GIANNOTTO: Good morning, Your Honor. Michael
13 Giannotto for the CNA companies.

14 MR. SCHEPACARTER: Good morning, Your Honor. Richard
15 Schepacarter for the United States Trustee.

16 THE COURT: Good morning.

17 MR. McDANIEL: Good morning, Your Honor. Garvan
18 McDaniel for Arrowood.

19 MR. HOGAN: Good morning, Your Honor. Daniel Hogan
20 on behalf of the Canadian Zonolite Claimants.

21 MR. WISLER: Good morning, Your Honor. Jeffrey
22 Wisler on behalf of Maryland Casualty Company.

23 MS. CASEY: Good morning, Your Honor. Linda Casey on
24 behalf of BNSF Railway Company.

25 THE COURT: Folks, I think I discovered the problem

1 with the order that we were attempting to address and I brought
2 it with me if I can find it. I neglected to put in the last
3 paragraph, all right, that I had put in the other orders and I
4 think that's perhaps what caused the problem. That paragraph,
5 depending on the case, in some instances it used the word
6 confirm. In some instances, it used the word affirm, but
7 nonetheless, I'll read it in the context of affirming. Those
8 cases have this order at the end of my order to the District
9 Court.

10 To the extent required under 28 U.S.C. Section
11 157(b), this Court hereby reports to the District Court and
12 recommends that the District Court enter an order issuing and
13 affirming this confirmation order including, without
14 limitation, the injunction pursuant to 11 U.S.C. Section
15 524(g)(3) in accordance with the terms of the joint plan, and
16 the attendant plan documents and the recommended findings of
17 fact and conclusions of law. And in this instance, I would
18 add, and the memorandum opinion overruling objections to the
19 first amended plan. I believe it's the omission of that
20 paragraph which caused the whole problem in this case because
21 that paragraph appeared in the other confirmation orders.

22 It seems to me that makes it clear that I was
23 confirming the plan and requesting the District Court to affirm
24 that confirmation. And that I had issued the injunction and
25 was requesting the Court -- the District Court to affirm the

1 issuance of that injunction. So, I think if I simply amend the
2 order to include that paragraph, it may take care of the issue
3 from my perspective. I see people shaking their heads no, so
4 I'm not sure why not. But, that seems to me to be the only
5 thing that was different about this order than the other
6 orders. Mr. Donley?

7 MR. DONLEY: I think it goes a large part of the way,
8 Your Honor, but let me just address what I think the remaining
9 problem may be and it will depend on what the other parties say
10 after I get up.

11 Your Honor's exactly right that that language has
12 been -- and I spent the weekend rereading all of -- every one
13 of the orders and memorandums from the prior cases and there's
14 basically two ways that Your Honor has done it, setting aside
15 where the District Court sat jointly --

16 THE COURT: Yes.

17 MR. DONLEY: -- like USG and issued it, itself. But,
18 there's basically two ways in ACandS and in Mid-Valley, Your
19 Honor actually issued, without any qualification, a
20 confirmation order saying it was core and there was no
21 qualification. And, of course, we'd urge that and be happy
22 with that in this case and we think that's a good way to go.

23 THE COURT: There were no objections.

24 MR. DONLEY: There were objections in Mid-Valley. I
25 went back and looked actually.

1 THE COURT: I thought they were resolved.

2 MR. DONLEY: I heard that Friday. I went back and
3 looked and they weren't -- we can provide the cite, but --

4 THE COURT: No, that's okay.

5 MR. DONLEY: I think --

6 THE COURT: I didn't check Mid-Valley. I just -- my
7 recollection was that they were resolved by the time we got --
8 I got around --

9 MR. DONLEY: There --

10 THE COURT: -- to entering the confirmation order.

11 MR. DONLEY: -- there was at least one remaining.

12 THE COURT: All right.

13 MR. DONLEY: I did check it over the weekend and I
14 don't think legally it makes any difference anyway. I
15 understand practically it may --

16 THE COURT: Yes.

17 MR. DONLEY: -- but, legally, it really doesn't.

18 So, in all the other cases the order has been
19 entered. The Court has said the plan's confirmed, the
20 injunction's entered, jurisdiction is core and then there's a
21 qualifying phrase similar to what Your Honor said. It's what I
22 call the to the extent that or the to the extent required
23 caveat that's because of the language of 524(g)(3)(A) about
24 issuing or affirming a confirmation order at the District Court
25 level. You have that qualifying phrase added.

1 And adding that here is one way to proceed and go
2 forward. I hesitate to say just flat out yes, that solves our
3 problem because, as we've read the filings and as we've talked
4 to the various objectors and appellants in this case, I believe
5 the position is still being taken that because the word
6 recommended is used in the title of one of Your Honor's
7 pleadings from January 31st, Number 1, I believe parties are
8 taking a position that no confirmation order was entered on
9 January 31, that all jurisdiction is non-core and that there is
10 no appeal running and there is no vehicle for us to move
11 forward and everyone to move forward through the appellate
12 process.

13 And the problem with that, Your Honor, is -- if
14 that's -- if that were the case. We don't believe it is, but
15 we believe people are asserting it is. And the problem with
16 that assertion still out there is really two-fold. One is we
17 need clarity that there was, in fact, a confirmation order
18 entered on January 31st, including for the portions --
19 especially for the portions unrelated to 524(g) and
20 specifically for the Canadian ZAI settlement. We understand
21 that the position is being taken or may be taken that there was
22 no confirmation order and therefore that settlement's undone
23 and we think that's absolutely not what Your Honor did. But, I
24 think we need a clarification on that.

25 The second reason we need clarification and ask for

1 clarification today is right now if the parties stick to their
2 positions, that there was no confirmation order, and that there
3 is no appeal process running, and that everything was non-core
4 and the only vehicle to move forward is the Rule 9033
5 objections, we have a situation where -- and this I lived
6 through, Your Honor, is that the only case -- 524(g) case that
7 I know of where it actually -- where the bankruptcy courts
8 order actually was just -- expressly just recommendations and
9 not a final confirmation order was Judge Brown's initial order
10 in the Eastern District of Louisiana in 2004 in
11 Babcock & Wilcox.

12 And what he did there was he said well, parts of what
13 I'm doing -- on the first go around, he said part so what I'm
14 doing are core, parts of what I'm doing are non-core and, so
15 I'm going to issue a everything as a recommendation and report.
16 And interestingly, what he said was non-core wasn't the 524(g)
17 aspects. It was a whole series of insurance disputes where the
18 insurers said they were State contract law determinations that,
19 in their view, were non-core. That was the part he was
20 flagging as non-core.

21 Fourteen days later, we got -- and I remember it,
22 Your Honor. The bankruptcy court clerk got and we got hundreds
23 of pages from the objectors under Rule 9033 briefing every
24 issue in the case, everything from the case and then just a
25 complete fiasco where there were dueling appeals and 9033

1 objections, hundreds of pages.

2 THE COURT: Well, Mr. Donley --

3 MR. DONLEY: And I think we -- I think if there's any
4 way to avoid that by clarifying today, it would be very, very
5 desirable.

6 THE COURT: I didn't bring the order with me. I
7 thought I had. I am relatively sure that I signed an order
8 that said that the plan is confirmed. The only thing I didn't
9 do was add this language. I -- and I made a specific finding
10 that indicated that these are core issues. To the extent that
11 it's a confirmation issue, it's clearly core. It's listed as a
12 core issue. There's no way I have the authority to say it's
13 non-core. The confirmation, it is core. Congress has said
14 that. So, it's a core issue to the extent that it's
15 confirmation related.

16 My view is -- and I understand Mr. Lockwood's
17 premises argued last week. My view is that with respect to the
18 issuance of the 524(g) injunction that, yes, I have the
19 jurisdiction to do it. But, the way I read 157 whatever the
20 subsection was, I think it's non-core as to 524(g). But, if
21 I'm wrong and it's core, no one is hurt by the fact that I
22 think it's non-core.

23 We are hurt with respect to the confirmation,
24 everybody is, if the Court doesn't do what the jurisdiction of
25 the Court is which is to confirm the plan. And I thought my

1 order clearly confirmed the plan and then recommended that the
2 District Court enter an order of confirmation. So, I think the
3 problem is it should have said probably -- this paragraph that
4 I omitted is the issue. It should have been in there asking
5 the District Court to affirm.

6 MR. DONLEY: I thank, Your Honor, and I may need just
7 a minute to confer with my client. But, if we have a
8 clarification here on the record that, in fact, Your Honor, did
9 issue a confirmation order on January 31st, that there was an
10 exercise of court jurisdiction as stated with the qualification
11 being added in the order today that to the extent it's non-core
12 and so forth, the language Your Honor read at the start, with
13 those clarifications, that may work. But, I just -- if I could
14 -- may I have a moment to confer --

15 THE COURT: Yes. Yes.

16 MR. DONLEY: -- with counsel and our client?

17 THE COURT: Those of you who have -- may I borrow
18 your confirmation -- copy of your confirmation order, Mr.
19 Frankel? I'll return it in one minute. Thank you.

20 MR. DONLEY: May I take just a minute --

21 THE COURT: Yes.

22 MR. DONLEY: -- because I don't want to make that
23 commitment and I may be missing something and I want to confer
24 with --

25 UNIDENTIFIED ATTORNEY: Your Honor, do you have a

1 copy of your memorandum opinion because there's a -- at the end
2 of your memorandum opinion regarding objections, after you say
3 not addressed, to be resolved, the Court recommends that the
4 District Court confirm --

5 THE COURT: Yes.

6 UNIDENTIFIED ATTORNEY: -- proponents amended to any
7 plan.

8 THE COURT: That's what this says, too, or affirm.

9 UNIDENTIFIED ATTORNEY: Yes. And what you really
10 mean is affirm --

11 THE COURT: Affirm.

12 UNIDENTIFIED ATTORNEY: -- don't you?

13 THE COURT: That's what -- yes, that's the problem, I
14 think.

15 UNIDENTIFIED ATTORNEY: Yes.

16 THE COURT: This -- I think this --

17 UNIDENTIFIED ATTORNEY: So, it appears in both the
18 memorandum opinion and the order. It's not just the order,
19 itself.

20 THE COURT: Yes, it was my error in looking at this.
21 You know, it was my error in not putting the correct words into
22 this opinion. That's correct. But, I believe that's it's
23 clarified if I add this paragraph, that that should take care
24 of it. Let's see here.

25 For example, on pages -- here's the problem. On --

1 I'm just picking out one example. On Page 75 and, again, on
2 Page 76, this is talking about the notice of the entry of the
3 confirmation order and it directs the parties to serve this
4 confirmation order and those are the words that are used.

5 So, if -- I understand the confusion of the parties.
6 I've confused myself and I apologize for that. But, I think
7 the addition of this paragraph would solve the problem. Mr.
8 Frankel, I'll return your copy. Thank you.

9 MR. DONLEY: Your Honor, on behalf of the debtors,
10 we'd make two other requests. Just to bolster and support your
11 statement here on the record today, that confirmation order
12 was, in fact, entered. Since the title still says recommended
13 findings on the start, we'd suggest just changing the title to
14 confirmation order is simply enough. And at the end of the
15 order, it doesn't say so ordered and if those words could be
16 are so ordered, the judge then decreed whatever the usual words
17 are. If that could be added at the end, we think that would be
18 helpful.

19 THE COURT: All right. I think what I may do is a
20 revised and simply -- or maybe a supplemental to clarify. I
21 think I will simply issue an order that is a supplement to the
22 confirmation order and clarifies it to correct my own -- I
23 don't know if it's considered to be administerial, or not.
24 I -- that's what I will view it as. It was simply I was trying
25 very hard to get the opinion filed by January 31st and, as a

1 result, I think I simply wasn't careful enough in making that
2 finding the way it should have been made. So, I will issue
3 that supplement.

4 To the extent that there is an appeal issue, however,
5 it seems to me that the appeal time will have to start running
6 from the day I issue the supplement because this was not clear
7 and I am -- I think I am not in a position to be able to
8 jeopardize parties' appeal rights. I don't think it matters
9 anyway since BNSF has a motion for reconsideration pending.
10 It's irrelevant. The time to file an appeal won't end until
11 that's done, in any event, but I think just to be clear, I
12 should make it clear that this entry on the docket will start
13 the appeal period.

14 MR. DONLEY: Yes, Your Honor. With the one proviso
15 we'd request that Your Honor's supplemental order or
16 supplemental document, whatever it's called, be nunc pro tunc
17 to January 31st, so there's no question that there was a
18 confirmation order insofar as the effectuation of the Canadian
19 ZAI settlement took place.

20 THE COURT: All right. Well, I'm -- I have no issue
21 before me with respect to the Canadian ZAI settlement. In
22 terms of clarifying the opinion and the order that I issue, I
23 will clarify the opinion and the order that I issue. And
24 whatever the effect is on the Canadian ZAI, that's what the
25 effect will be. I don't have an issue before me and I'm not

1 adjudicating that, but I will clarify the confusion that I
2 created.

3 MR. DONLEY: And the clarification is as to what Your
4 Honor intended on January 31st as I understand, is that --

5 THE COURT: I will clarify it, Mr. Donley. To the
6 best of my ability, I will clarify it. If you're not happy
7 with it, appeal. That's all I can tell you.

8 (Laughter)

9 MR. DONLEY: All right. Well, I hope to be very
10 happy with it, Your Honor.

11 (Laughter)

12 MR. DONLEY: I'm an optimist.

13 THE COURT: Okay. This isn't going to happen until
14 tomorrow when I have a chance to get back to Pittsburgh and
15 take a look at the documents. I want to make sure that I
16 actually get all of the clarifications clarified, but I will
17 make sure that Judge Buckwalter has a copy of the changes. I
18 will have someone on my staff notify him that this supplement
19 is coming, so that he'll be aware. He may be confused by it,
20 too.

21 MR. DONLEY: One other matter -- or related matter,
22 Your Honor. On the BNSF motion for reconsideration, we're, of
23 course, very eager to move ahead as rapidly as possible with
24 this case and I know that's not formally set until March 28th.
25 We had talked informally with Ms. Casey about having an

1 expedited schedule and I understand she's agreeable. We didn't
2 have dates, but if we could try to get a date for a response
3 and a hearing that, you know, doesn't push out into the end of
4 March. But, if we could try to get something --

5 MR. LOCKWOOD: Before we --

6 MR. DONLEY: Mr. Lockwood's involved.

7 MR. LOCKWOOD: -- address that, could we find out
8 whether anybody else is planning on filing a motion to
9 reconsider because I believe that the due date is the close of
10 business today and our schedule might be affected by whether
11 we're only addressing the BNSF motion or whether other folks in
12 the room are imminently going to file something after we leave
13 the courtroom.

14 MR. DONLEY: Okay.

15 THE COURT: If you --

16 MR. DONLEY: Agreed.

17 THE COURT: Mr. Monaco?

18 MR. MONACO: Good morning, again, Your Honor. Frank
19 Monaco on behalf of Montana and Canada. Your Honor, to that
20 point, Montana kind of do intend to join in -- partially join
21 in the third point raised by BNSF in their motion, so we were
22 going to file a joinder today.

23 THE COURT: Okay. But, that won't raise a new issue.

24 MR. MONACO: No.

25 THE COURT: Okay.

1 MR. MONACO: It will not raise a new issue.

2 THE COURT: All right.

3 MR. MONACO: And while I'm at the podium, Your Honor,
4 I did want to apologize to the Court and to the parties on the
5 phone on Friday. Just as I started to address the Court, a
6 fire sprinkler apparently burst and there was a fire alarm. We
7 had to evacuate and I --

8 THE COURT: We really didn't want you burned up,
9 literally, Mr. Monaco.

10 MR. MONACO: So, I do apologize to the Court.

11 One other housekeeping matter, Your Honor, with
12 respect to the -- we filed joinders to the --

13 THE COURT: Yes.

14 MR. MONACO: -- 9033 and I just want to make clear
15 for the record that Your Honor's order, which I believe was
16 entered on Friday, that extension applies to all parties.

17 THE COURT: Yes, sir.

18 MR. MONACO: Okay.

19 THE COURT: It applies to everyone and I will not
20 change that date. I think if you need an additional extension,
21 you've got a status conference in front of Judge Buckwalter and
22 if you need additional time, I really think you should ask
23 him --

24 MR. MONACO: All right.

25 THE COURT: -- for that additional time.

1 MR. MONACO: Okay. And, Your Honor, may I also just
2 briefly address the finality issue --

3 THE COURT: Yes.

4 MR. MONACO: -- on here. Your Honor, I don't
5 disagree with Your Honor's analysis as you set forth on Friday.
6 I won't belabor the point. I think you had it right with
7 respect to 524(g)(3)(A) and the interplay of Section 157, I
8 think the language you're proposing goes a long way to fixing
9 that.

10 One thing I'm just still a little bit unclear is the
11 effect of the separate recommendations that are now deemed or
12 termed recommendations versus the opinion. The opinion still
13 has findings of fact that involve non-core issues and I want it
14 clear for the record that any order --supplemental order that
15 will be entered by Your Honor doesn't make the entire opinion a
16 final order with respect to issues that may be ultimately non-
17 core.

18 THE COURT: That's up to Judge Buckwalter to
19 determine.

20 MR. MONACO: Okay.

21 THE COURT: All I can do is --

22 MR. MONACO: Well, Your Honor, one of the things I
23 was going to actually suggest is that we just defer this until
24 Wednesday and let him address it, but --

25 THE COURT: No, I think I need to clarify my own

1 confirmation --

2 MR. MONACO: Okay.

3 THE COURT: -- order, Mr. Monaco. I should not have
4 issued the order that caused this kind of confusion and I think
5 it's up to me to clarify it. So, I'm going to clarify it. I
6 hope --

7 MR. MONACO: Okay.

8 THE COURT: -- to do it in a fashion that, you know,
9 is non-controversial, but based on what's happened in this
10 case, I'm not sure anything can do anything in the case that's
11 non-controversial. But, I'll do my best.

12 MR. MONACO: Okay. Thank Your Honor.

13 THE COURT: Mr. McDaniel?

14 MR. McDANIEL: Good morning, Your Honor. Garvan
15 McDaniel for Arrowood. Your Honor, hopefully this is
16 non-controversial. Arrowood was planning on filing a motion
17 for a technical amendment. There's just a mistake in one of
18 the annexes regarding to one of Arrowood's names, so we just --
19 we were planning on filing that and we just wanted to bring
20 that to the Court's attention.

21 THE COURT: Okay. I don't think that should be an
22 issue that would have any objection. If you can file it
23 before --

24 MR. McDANIEL: I can --

25 THE COURT: -- tomorrow, I might be able just to

1 incorporate that change into this confirmation order, Mr.
2 McDaniel. That's not an appeal issue or anything.

3 MR. MCDANIEL: Right. I will file as soon as I get
4 back to my office and email it to your mailbox, Your Honor.

5 THE COURT: Okay. That would be helpful and that
6 way, when I get it, I -- if that's all it is, is a change to a
7 name, I'll just make that technical correction.

8 MR. MCDANIEL: It's just from Arrowood Capital to
9 Arrowpoint Capital. That's it.

10 THE COURT: Okay. Then I'll make that technical
11 correction. Are there any of those other types of simply
12 technical corrections that need to be addressed?

13 (No verbal response)

14 THE COURT: If so, would you please file them today,
15 so that tomorrow morning, when I'm back in the office, I can
16 take a look at them and consider them all. But, please, make
17 sure you send them to the JKF box. If you don't, I won't see
18 them.

19 Okay. It looks like no one else is filing motions
20 for reconsideration, so what have you worked out?

21 MR. DONLEY: We didn't have a chance to work out
22 dates, but, Your Honor, we'd be able to reply to the motion
23 within a week by say February 22, and would ask for a hearing
24 as soon as possible after that, that Your Honor could be
25 available.

1 THE COURT: Can you get into the Pittsburgh calendar?

2 COURT CLERK: (Indiscernible). The earliest is --

3 THE COURT: Okay. Will you need to reply?

4 MR. DONLEY: I will say I don't think it will take
5 much time. It's a reasonably discreet issue, I believe.

6 THE COURT: Will you need to reply, Ms. Casey?

7 MS. CASEY: Well, we would like to reserve the right
8 to reply. Yes, Your Honor.

9 THE COURT: How much time?

10 MS. CASEY: A week would be fine.

11 THE COURT: Okay. That's June 29.

12 MR. DONLEY: Whoa.

13 UNIDENTIFIED ATTORNEY: June?

14 THE COURT: I'm sorry, February.

15 UNIDENTIFIED ATTORNEY: I think it's March 1st.
16 March 1st.

17 THE COURT: March 1st. That's what happens when you
18 have granddaughters born in February and in June and you go to
19 their birthday parties.

20 (Laughter)

21 THE COURT: This argument will be in Pittsburgh. You
22 can appear by phone if you'd like. I don't think it's going to
23 take that much time really. We'll notify court call. I can do
24 March 7th in the morning. I have a procedure that I've agreed
25 to do with the District Court at 12:30, so I'd had to be

1 finished by 12 to get there.

2 MR. DONLEY: Can -- is there noting the week before
3 that would be possible?

4 COURT CLERK: In February?

5 THE COURT: No, March -- the week of March 1st.

6 THE COURT: The week of March 1?

7 COURT CLERK: How much time?

8 THE COURT: An hour?

9 MR. DONLEY: That would be well sufficient, I'd
10 imagine. Yes.

11 THE COURT: Their response is due March 1st.

12 COURT CLERK: Right. So, that will (indiscernible).

13 THE COURT: What time does that start, ten?

14 COURT CLERK: (Indiscernible).

15 THE COURT: At what time, ten? What day was that?

16 COURT CLERK: That's March 2nd.

17 MR. DONLEY: That would be terrific, Your Honor.

18 THE COURT: Can I shorten your time by a day, so I
19 have a chance to have your reply?

20 MS. CASEY: Yes, Your Honor.

21 UNIDENTIFIED ATTORNEY: I'm sorry, Your Honor. What
22 was the day?

23 THE COURT: March 2nd at nine o'clock.

24 MR. DONLEY: In Pittsburgh, Your Honor, correct?

25 THE COURT: In Pittsburgh, but you can appear by

1 court call.

2 MR. DONLEY: Okay.

3 THE COURT: We'll make the arrangements. Well, we'll
4 notify the court call. You'll have to call in as usual, but
5 then BNSF's reply is due February 28, so that I have a chance
6 to read it. Okay.

7 MR. DONLEY: Thank you, Your Honor.

8 COURT CLERK: At the same time, they should apply
9 for --

10 MR. DONLEY: Oh, and I assume the same timing for Mr.
11 Monaco's joinder and any filings he may make.

12 THE COURT: Yes. Mr. Monaco, does that work?

13 MR. MONACO: Yes, Your Honor.

14 THE COURT: Okay. Okay. So, I have responses
15 February 22, and replies, February 28, the argument March 2nd
16 at nine in Pittsburgh, but you may appear by phone. Okay. All
17 right, folks, is -- I think that's all on Grace.

18 COURT CLERK: That is.

19 THE COURT: Okay. Thank you.

20 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

21 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

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C E R T I F I C A T I O N

I, AMY L. RENTNER, certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Amy Rentner

AMY RENTNER

J&J COURT TRANSCRIBERS, INC. DATE: February 16, 2011